

**§ 1003.43 Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.**

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) or (h) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104-208) (IIRIRA), as amended by section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105-100) (NACARA) and by section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106-554) (LIFE Act Amendments), respectively, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the Act, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the six classes of aliens described in paragraphs (d)(1) through (d)(6) of this section.

(c) *Aliens eligible to reopen proceedings under section 1505(c) of the LIFE Act Amendments.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(h) of IIRIRA, as amended by section

1505(c) of the LIFE Act Amendments, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the eight classes of aliens described in paragraph (d) of this section.

(d) *Classes of Eligible Aliens*—(1) *Class 1.* A national of El Salvador who:

(i) First entered the United States on or before September 19, 1990;

(ii) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al. v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(2) *Class 2.* A national of Guatemala who:

(i) First entered the United States on or before October 1, 1990;

(ii) Registered for ABC benefits on or before December 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(3) *Class 3.* A national of Guatemala or El Salvador who applied for asylum with the Service on or before April 1, 1990.

(4) *Class 4.* An alien who:

(i) Entered the United States on or before December 31, 1990;

(ii) Applied for asylum on or before December 31, 1991; and

(iii) At the time of filing such application for asylum was a national of the Soviet Union, Russia, any republic of

the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

(5) *Class 5.* The spouse or child of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(6) *Class 6.* An unmarried son or daughter of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of age or older, the son or daughter must have entered the United States on or before October 1, 1990.

(7) *Class 7.* An alien who was issued an Order to Show Cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation as a battered alien under former section 244(a)(3) of the Act (as in effect before September 30, 1996).

(8) *Class 8.* An alien:

(i) Who is or was the spouse or child of a person described in paragraphs (d)(1) through (d)(4) of this section:

(A) At the time a decision is rendered to suspend deportation or cancel removal of that person;

(B) At the time that person filed an application for suspension of deportation or cancellation of removal; or

(C) At the time that person registered for ABC benefits, applied for TPS, or applied for asylum; and

(ii) Who has been battered or subjected to extreme cruelty (or the spouse described in paragraph (d)(8)(i) of this section has a child who has been battered or subjected to extreme cruelty) by the person described in paragraphs (d)(1) through (d)(4) of this section.

(e) *Motion to reopen under section 203 of NACARA.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of depor-

tation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. An alien may file only one motion to reopen pursuant to section 309(g) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (b) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen filed pursuant to paragraph (b) of this section shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than November 18, 1999. Aliens described in paragraphs (d)(5) or (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court with either the Form EOIR-40 or the Form I-881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application on or before November 18, 1999, the motion will be denied as abandoned.

(f) *Motion to reopen under section 1505(c) of the LIFE Act Amendments.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen with an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An alien may file only one motion to reopen proceedings pursuant to section 309(h) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (c) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen and the accompanying application and supporting documents filed pursuant to paragraph (c) of this section must be submitted on or before October 16, 2001. Aliens described in paragraphs (d)(5) and (d)(6) of

this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court to respond to that motion to reopen.

(g) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) or (h) of IIRIRA, as amended by section 203(c) of NACARA and by section 1505(c) of the LIFE Act Amendments, respectively.

(h) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate the motion.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

(i) *Jurisdiction over motions to reopen under section 1505(c) of the LIFE Act Amendments and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to paragraph (f) of this section to apply for suspension of deportation or cancellation of removal under section 1505(c) of the LIFE Act Amendments shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. Only an alien with a reinstated final order, or an alien with a newly issued final order that was issued based on the alien hav-

ing reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may file a motion to reopen with the Immigration Court or the Board pursuant to this section. An alien whose final order has not been reinstated and as to whom a newly issued final order, as described in this section, has not been issued may apply for suspension of deportation or special rule cancellation of removal before the Service pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, according to the jurisdictional provisions for applications before the Service set forth in 8 CFR 240.62(a) or before the Immigration Court as set forth in 8 CFR 240.62(b).

(2) If the Immigration Court has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

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